

Thanks

Karen Lynn-Dyson  
Research Director  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

Don't get soaked. Take a quick peek at the forecast  
with the Yahoo! Search weather shortcut.

---

Food fight? Enjoy some healthy debate  
in the Yahoo! Answers Food & Drink Q&A.

010763



"Rosemary Rodriguez "

03/08/2007 05:19 PM

To jhodgkins@eac.gov

cc

bcc

Subject Re: Final EAC statement on Voter ID report

**Deliberative Process  
Privilege**

okay. thanks.

----- Original Message -----

From: "jhodgkins@eac.gov" <jhodgkins@eac.gov>

To: rosemaryrod2003@yahoo.com

Sent: Thursday, March 8, 2007 5:16:57 PM

Subject: Re: Final EAC statement on Voter ID report

No. When we are ready to get started with that, I will send you a package with a date and time that the vote begins and ends. Possibly tomorrow. But, it could be Monday.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

"Rosemary Rodriguez "

03/08/2007 05:15 PM

To jhodgkins@eac.gov, klynndyson@eac.gov

cc jlayson@eac.gov, ghillman@eac.gov, "Davidson, Donetta"

<ddavidson@eac.gov>, chunter@eac.gov

Subj Re: Final EAC statement on Voter ID report  
ect

are we now in the 48 hour tally vote period?

----- Original Message -----

From: "jhodgkins@eac.gov" <jhodgkins@eac.gov>

To: klynndyson@eac.gov

Cc: jlayson@eac.gov; ghillman@eac.gov; "Davidson, Donetta" <ddavidson@eac.gov>;

chunter@eac.gov; [REDACTED]

Sent: Thursday, March 8, 2007 4:35:27 PM

010764

Subject: Re: Final EAC statement on Voter ID report

Karen,

I started by adopting all of the changes made to the document that you sent me. Then I made edits. Because they are so extensive, I thought it best to note them in track changes. Once you have had a chance to read them over, you can get rid of the formatting problems by "accepting all changes" to the document.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

Karen Lynn-Dyson/EAC/GOV

03/08/2007 12:47 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC  
cc  
Subject Final EAC statement on Voter ID report

Julie/Jeannie-

Attached please find the final version of the EAC statement on the Voter ID report.

As indicated, the Commissioners have asked that you all review this statement for legal accuracy, grammar, syntax, etc, before it is sent to them for final review and approval.

If you could, go ahead and make the edits without track changes (as track changes seem to create printing problems)

Once you all have edited the statement I will send the final version on to them for the tally vote.

Thanks

Karen Lynn-Dyson  
Research Director  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100

010765

Washington, DC 20005  
tel:202-566-3123

Don't get soaked. Take a quick peek at the forecast  
with the Yahoo! Search weather shortcut.

---

Never miss an email again!

Yahoo! Toolbar alerts you the instant new Mail arrives. Check it out.

**Deliberative Process  
Privilege**



**"Rosemary Rodriguez"**

03/08/2007 05:15 PM

To jhodgkins@eac.gov, klynndyson@eac.gov

cc jlayson@eac.gov, ghillman@eac.gov, "Davidson, Donetta"  
<ddavidson@eac.gov>, chunter@eac.gov

bcc

Subject Re: Final EAC statement on Voter ID report

History

This message has been replied to

are we now in the 48 hour tally vote period?

----- Original Message -----

From: "jhodgkins@eac.gov" <jhodgkins@eac.gov>

To: klynndyson@eac.gov

Cc: jlayson@eac.gov; ghillman@eac.gov; "Davidson, Donetta" <ddavidson@eac.gov>;  
chunter@eac.gov; [REDACTED]

Sent: Thursday, March 8, 2007 4:35:27 PM

Subject: Re: Final EAC statement on Voter ID report

Karen,

I started by adopting all of the changes made to the document that you sent me. Then I made edits. Because they are so extensive, I thought it best to note them in track changes. Once you have had a chance to read them over, you can get rid of the formatting problems by "accepting all changes" to the document.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

Karen Lynn-Dyson/EAC/GOV

03/08/2007 12:47 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC

cc

Subject Final EAC statement on Voter ID report

Julie/Jeannie-

010767

Attached please find the final version of the EAC statement on the Voter ID report.

As indicated, the Commissioners have asked that you all review this statement for legal accuracy, grammar, syntax, etc, before it is sent to them for final review and approval.

If you could, go ahead and make the edits without track changes (as track changes seem to create printing problems)

Once you all have edited the statement I will send the final version on to them for the tally vote.

Thanks

Karen Lynn-Dyson  
Research Director  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

---

Don't get soaked. Take a quick peek at the forecast  
with the Yahoo! Search weather shortcut.

010768

**Deliberative Process  
Privilege**



"Tom O'Neill"

05/22/2006 03:39 PM

To klynndyson@eac.gov

cc asherrill@eac.gov, jthompsonhodgkins@eac.gov

bcc

Subject RE: Presentations at the EAC Governing Boards

History

This message has been forwarded

Karen,

The PowerPoint presentations for the Standards Board and the Advisory Board are attached.  
See you tomorrow.

Tom O'Neill

-----Original Message-----

**From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]

**Sent:** Monday, May 22, 2006 3:18 PM

**To:** [REDACTED]

**Cc:** asherrill@eac.gov; jthompsonhodgkins@eac.gov

**Subject:** RE: Presentations at the EAC Governing Boards

Hi Tom-

Just checking to see if your Power Point slides might be ready.

When they are, please send them on to me and hit Reply to All as Julie Hodgkins and Amie Sherrill (the Chairman's Special Assistant) would like copies before the presentation.

Thanks

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005



tel:202-566-3123 BriefingPVADVBD524.ppt BriefingPVSTDBD523.ppt

010769

Briefing for

May 24 , 2006





# Provisional Voting

## Findings and Recommendations

0107711



---

# EAGLETON INSTITUTE OF POLITICS

---

Rutgers, The State University of New Jersey

**MORITZ COLLEGE OF LAW**      **THE OHIO STATE UNIVERSITY**

010772

**Dr. Ruth B. Mandel, Director. Eagleton Institute of Politics**

Board of Governors Professor of Politics

Principal Investigator and Chair of the Project Management Team

**Edward B. Foley, Robert M. Duncan/Jones Day Designated Professor of Law**

The Moritz College of Law

Director of Election Law @ Moritz

**Ingrid Reed. Director of the New Jersey Project**

The Eagleton Institute of Politics

**Daniel P. Tokaji, Assistant Professor of Law**

The Moritz College of Law

**John Weingart, Associate Director**

The Eagleton Institute of Politics

**Thomas M. O'Neill, Consultant**

The Eagleton Institute of Politics

Project Director

## **QUESTIONS RAISED BY THE EAC**

- 1. How did states prepare for HAVA's provisional voting requirements?**
- 2. How did preparation and performance vary between states that had previously had some form of Provisional Ballot and those that did not?**
- 3. How did litigation affect the implementation of Provisional Voting?**
- 4. How effective was provisional voting in enfranchising qualified voters?**
- 5. Did State and local processes provide for consistent counting of provisional ballots?**
- 6. Did local election officials have a clear understanding of how to implement provisional voting?**

## **TO ANSWER THOSE QUESTIONS**

- ☐ **Surveyed 400 local election officials**
- ☐ **Reviewed the EAC's Election Day Survey**
- ☐ **Analyzed states' experience with provisional voting:**
  - use of statewide registration database**
  - treatment of out-of-precinct ballots**
  - use of different approaches to voter ID**
  - consistency**
  - time period allowed for ballot evaluation**
- ☐ **Collected provisional voting statutes and regulations**
- ☐ **Analyzed litigation**

## **Variation among the states**

- ☐ In 2004 nationwide about 1.9 million provisional ballots cast, 1.2 million , or just over 63%, were counted.
- ☐ The percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%.
- ☐ The portion of provisional ballots cast that were counted ranged from 96% in Alaska to 6% in Delaware.

## **Some sources of variation among states**

### **Experience**

Share of provisional ballots in the total vote was 6 times greater in states that had used provisional ballots before than in states where the provisional ballot was new.

### **Administrative Arrangements**

Time to evaluate ballots

- States that provided less than one week counted an average of 35.4% of their ballots.
- States that permitted more than 2 weeks counted 60.8%.

Voter registration data bases

- States with voter registration databases counted an average of 20% of the provisional ballots cast.
- States without databases counted 44%.]

## **Variation within states**

**Rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state.**

**Resources available to administer provisional voting varied considerably among and within states.**

**The Election Day Study found that staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories.**



**1. How did states prepare for HAVA's provisional voting requirements?**

---

**Most election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states.**

**Almost all provided training or written instruction to precinct-level poll workers on how to administer provisional ballots.**

## **2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?**

---

**18 states were new to provisional voting; 25 others had experience.**

**Local election officials in the “old” states felt more confident.**

**Provisional ballots in “old states” : more than 2% of the total vote, 4 times the proportion in “new” states.**

**Counting provisional ballots in the final vote, the “old” states averaged 58% nearly double the average (33%) in “new” states.**

### **Question 3: How did litigation affect the implementation of Provisional Voting?**

---

#### **Pre-election litigation clarified voters' rights to:**

- Sue in federal court to remedy violations of HAVA
- Receive provisional ballots, even though they would not be counted
- Be directed to the correct precinct
- Most pre-election litigation occurred too late to influence how states implemented provisional voting.

#### **4. How effective was provisional voting in enfranchising qualified voters?**

---

**Provisional ballots enfranchised 1.2 million voters, or 1.01% of turnout, who otherwise would have been turned away.**

**The number of voters who could be helped by provisional voting may be about 2.5 – 3 million. Provisional voting might be about 50% effective.**

**There is room for improvement.**

## **Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

Little consistency existed among and within states.

“New” states with registration databases counted 20% of the ballots cast. Those without databases counted more than double that rate (44%).

States that allowed out-of-precinct ballots counted 56% of the provisional ballots, 42% for in-precinct states.

States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.

Less than 1 week:	58.6%
1 – 2 weeks:	65.0%
More than 2 weeks:	73.8%.

**Question 6: Did local election officials have a clear understanding of how to implement provisional voting?**

---

**8 out of 10 county-level elections officials reported receiving instructions from their state government**

**4 out of 10 local election officials felt poll workers needed more training to understand their responsibilities**

**Objectively, how well did the process appear to be managed?**

**Lack of consistency among and within states indicates wide differences in understanding by election officials.**

**The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.**

Margaret Sims /EAC/GOV  
01/19/2006 03:26 PM

To jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC  
cc Karen Lynn-Dyson/EAC/GOV@EAC  
bcc  
Subject Extension Needed for Voting Fraud/Voter Intimidation Project  
Consultants

The estimated additional hours needed to bring the Voting Fraud/Voter Intimidation Project to a logical stopping point (without requiring a draft statement of work for any future RFPs on the topic) are:

Expert Interviews:

- 3 hours of scheduling
- 17 hours conducting the interviews
- 15 hours summarizing and analyzing the interviews

Subtotal: 35 hours

Nexis research, organization of research, summary of research (Tova): 180 hours

Lexis research, organization of research, summary of research (Job): 180 hours

Subtotal: 360 hours

Working Group preparation and meeting time: 20 hours

Final Report: 45 hours

Grand Total: 460

The sooner we find out if the Commissioners will accept this extension, the better. If the extension (or new contract for 3 additional months) is not accepted, we have to figure out what can be done in the limited time remaining. --- Peggy

010785

Margaret Sims /EAC/GOV  
11/30/2005 09:28 AM

To jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC  
cc  
bcc

Subject Definition of Voting Fraud and Voter Intimidation

History:  This message has been replied to.

Attached discusses the definitions that Job and Tova would like to use. I have already taken issue with the exclusion of all voter registration shenanigans and the inclusion of administrative mistakes. Would be pleased to have your feedback and, if possible, your assistance for 15 minutes of a teleconference today (3:30 PM to 3:45 PM). --- Peggy



combined defining Fraud 11-18-05.doc

010786



"Fraud" should be defined as any illegal act that has a clear and direct distorting impact on the election results. It includes adding illegal votes and tampering with vote counts as well as actions such as voter intimidation and deceptive practices that serve to subtract legal votes. Illegally keeping certain voters from voting has the same distorting effect on election outcomes as ineligible voters casting ballots or some form of modern ballot box stuffing. Fraud may involve wrongdoing by individual voters, election workers or organized groups such as campaigns or political parties.

Vote fraud usually breaks down into three categories---intentional fraud, de facto fraud, and quasi-fraud. Research and investigation of fraud should focus on those forms of fraud that are known to have had true impacts on election outcomes.

"Intentional fraud" includes acts that are intentionally planned. Such forms of fraud include the following:

- Absentee/mail ballot fraud, e.g. coercing another voter's choice, use of a false or other voter's name and signature, destruction or misappropriation of an absentee or mail-in ballot
- Ex-felons knowingly and willingly casting illegal ballots
- Knowingly and willingly misleading an ex-felon about his or her right to vote
- Voting more than once
- Noncitizen voting
- Intimidating practices e.g. intimidating signs, inappropriate police presence, abusive/threatening treatment by poll workers or others that deter voters from voting
- Deceptive practices e.g. providing false information to voters about the voting process, such as when and/or where to vote, who is eligible to vote
- Fraud by election administrators in the handling or counting of ballots, misrepresentation of vote tallies
- Vote buying
- Addition or destruction of cast ballots by elections officials
- Intentional wrongful removal of eligible voters from voter registration lists
- Knowingly falsifying registration information pertinent to eligibility to cast a vote, e.g. residence, criminal status, etc.

The second type of fraud is de facto fraud. This occurs when the intent to commit fraud is lacking, but the party or parties' actions results in fraud nonetheless. De facto fraud more often is a result of a misapplication of election statutes or the application of a long established practice or tradition in a way that contradicts the intent of the statute. Examples of de facto fraud include the abusive use of challengers to voter registrations or to voters' eligibility at the polls and wrongful purging of voter lists.

The last form of fraud, "quasi-fraud," is the most difficult to classify as such because the correct law (case law or legislative act) is applied but the result is to deprive voters of their electoral rights. This type of fraud is also the most difficult to catch because it requires both legal electoral expertise and almost always occurs on the day of the election. One example of this is Arkansas supreme court case law making election

statutes mandatory before an election but discretionary after. The discretion is left up to the county board of election commissioners. These are not elected but are either the chairs of the two main political parties or a person elected by the county central committee should the chair decide not to serve. The result is that election statutes are never enforced after the election. It therefore permits past patterns of fraud to persist.

Two areas that are of major concern but do not come within the purview of fraud for the purposes of this type of research are registration forms in the name of another or fake person(s), which from the evidence do not usually result in illegal votes; and electronic vote machine tampering, for which there is as of now no definitive evidence has taken place in a U.S. election.

Subject Voter Fraud Contract

Karen/Tom,


Peggy held a meeting with voting fraud/intimidation contractors. In this meeting they noted that despite the fact that the contract requires them to perform legal research, they do not have the means to do so (no access to Westlaw, etc.). They noted that in discussions with the two of you, they were told that the EAC would provide them access to West Law and, possibly, a law clerk with office space. None of this is noted in the contract. They claim to have never seen the contract? Do we have their response to our RFP? We will all need to meet to clarify this.

GG

Gavin S. Gilmour  
Associate General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

010789

Margaret Sims /EAC/GOV  
10/06/2005 01:53 PM

To Carol A. Paquette/EAC/GOV@EAC  
cc twilkey@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC,  
jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC  
bcc  
Subject Re: Voter Fraud Contract 

Carol:


This updated version is helpful to me but may be problematic for our contractors, who do not have a final contract and (I think) are unaware of the deliverable dates listed in this version. Of course, I did not inform them of these deadlines because I did not have them until today.

Unfortunately, the delay in getting the signed contracts out to our selected contractors has already adversely impacted deliverable dates for the contracts to which I have been assigned. Most contractors cannot hire researchers or commit funds without having a contract in hand, so they have had to delay their work.

--- Peggy

Carol A. Paquette/EAC/GOV

Carol A. Paquette/EAC/GOV  
10/06/2005 01:07 PM

To klynndyson@eac.gov@EAC  
Gavin S. Gilmour/EAC/GOV@EAC, Juliet E.  
cc Thompson/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
Subject Re: Voter Fraud Contract 


The SOWs that Karen provides below were revised for these contracts. I have attached one of these for your information, since they are identical.



Wang consulting contract.doc

Carol A. Paquette  
U.S. Election Assistance Commission  
(202)566-3125 cpaquette@eac.gov  
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV  
10/06/2005 12:28 PM

To Gavin S. Gilmour/EAC/GOV@EAC  
Carol A. Paquette/EAC/GOV@EAC, Juliet E.  
cc Thompson/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
Subject Re: Voter Fraud Contract 

010790

Gavin-

A few answers to your questions:

They have not received contracts but did receive a Statement of Work about a month ago.

That Statement of Work does not reference use of Westlaw or a law clerk. I have no recollection of offering such services. I have, however, had many conversations with Tova and Job. At some point I may have said that because the EAC has Westlaw and legal interns, there may or may not be a way from Job and Tova to avail them of these services.

The Statements of Work developed (see draft attached) were used in place of an RFP. Tova and Job are to serve as consultants on a project that may or may not result in their developing an RFP on voting fraud and intimidation for the EAC.



Job Serebrov sow.doc Tova Wang sow.doc

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

Gavin S. Gilmour/EAC/GOV

Gavin S. Gilmour/EAC/GOV

10/06/2005 11:50 AM

To Karen Lynn-Dyson/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
cc Carol A. Paquette/EAC/GOV@EAC

Subject Voter Fraud Contract

Karen/Tom,

Peggy held a meeting with voting fraud/intimidation contractors. In this meeting they noted that despite the fact that the contract requires them to perform legal research, they do not have the means to do so (no access to Westlaw, etc..). They noted that in discussions with the two of you, they were told that the EAC would provide them access to West Law and, possibly, a law clerk with office space. None of this is noted in the contract. They claim to have never seen the contract? Do we have their response to our RFP? We will all need to meet to clarify this.

GG

Gavin S. Gilmour  
Associate General Counsel  
United States Election Assistance Commission

010791

1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

Gavin S. Gilmour/EAC/GOV

09/20/2005 05:20 PM

To Jthomson@eac.gov

cc

bcc

Subject Fw: Voting Fraud and Intimidation contract

Julie,

Per my previous e-mail,, I have some concerns about this concept and our roles as counsel. I would like to discuss the matter. Having counsel act as the COTR makes me uncomfortable (at least at first blush). Please do not feel like I am objecting to this matter, it just makes me uneasy. A brief conversation on the issue may alleviate my worries.

Gg

Thanks

-----  
Sent from my BlackBerry Wireless Handheld  
Karen Lynn-Dyson

**From:** Karen Lynn-Dyson  
**Sent:** 09/20/2005 04:57 PM  
**To:** Tova Wang" [REDACTED] /@GSAEXTERNAL  
**Cc:** Thomas Wilkey; Gavin Gilmour; Carol Paquette  
**Subject:** Re: Voting Fraud and Intimidation contract

Tova-

The contracts are completed, although not formally signed by the Chair of the Commission ( a formality)

As discussed, the contract will be for six months-September 26- February 28 for a fixed contract fee of \$50,000 plus and additional \$5,000 for expenses.

\$10,000 has been set aside in the FY 05 EAC budget to cover working group costs.

Gavin Gilmour will be the EAC staff project manager, to whom you and Job will be reporting.

Gavin should be in touch in the next day or so, with more details and specifics related to getting the project started.

Thanks

K  
Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"Tova Wang" [REDACTED]



"Tova Wang"

To klynndyson@eac.gov, nmortellito@eac.gov

010793



09/20/2005 04:38 PM

cc  
Subject

Hi Karen and Nicole,

I know you guys have been swamped, but I wanted to check in because I haven't heard from you and I am getting all sorts of information from Job, second hand. I would rather not operate that way. Is it the case that the contracts have been finalized? Can you give me a hint about the terms? When might I be seeing a copy? Thanks so much.

Best wishes,

Tova

Tova Andrea Wang  
Senior Program Officer and Democracy Fellow  
**The Century Foundation**  
41 East 70th Street - New York, NY 10021  
phone: 212-452-7704 fax: 212-535-7534

Visit our Web site, [www.tcf.org](http://www.tcf.org), for the latest news, analysis, opinions, and events.

---

[Click here](#) to receive our weekly e-mail updates.

010794



Gavin S. Gilmour/EAC/GOV  
10/31/2005 03:39 PM

To Juliet E. Thompson/EAC/GOV@EAC  
cc  
bcc  
Subject



Wang consulting contract 3.doc

We probably should have karen create a pay justification document as well.

Gavin S. Gilmour  
Associate General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

010795

**EAC CONTRACT #05-66 Consulting Services to Assist EAC  
in the Development of a Voting Fraud and Voter Intimidation Project**

**Background**

Section 241 of HAVA lists a number of election administration topics on which the U.S. Election Assistance Commission may elect to do research. In particular, Section 241(b) (6) and (7) state the two topics regarding the identification, deterrance and investigation of voting fraud and voter intimidation in elections for Federal offices. The EAC Board of Advisors has recommended that the EAC make research on these topics a high priority.

The EAC seeks to obtain consulting services from an individual who can provide advice drawn from broad professional and technical experience in the area of voter fraud and intimidation. The EAC needs this consultant to conduct a preliminary examination of these topics to determine if a larger research project might be warranted. If so, the consultant would also be tasked to define the scope of the project and prepare a Statement of Work for the EAC to use for a subsequent competitive procurement. To promote a balanced and non-partisan approach to this effort, EAC is contracting with two consultants, who will work jointly to perform the work described below.

**Nature of the Appointment**

The EAC enters into this contract pursuant to its authority to contract for consultants under 5 U.S.C. §3109 (See 42 U.S.C. §15324(b)). As such this contract is for personal services and creates a limited employment relationship. (See 5 C.F.R. §304). As a result of this unique relationship, and pursuant to this agreement, you are required to follow all Federal laws and regulations as they related to conflicts of interest, the release of agency documents and information, travel and conduct. All research, information, documents and any other intellectual property, (including but not limited to policies, procedures, manuals, and other work created at the request or otherwise while laboring for the EAC) shall be owned exclusively by the EAC, including copyright. All such work product shall be turned over to the EAC upon completion of your appointment term or as directed by the EAC. The EAC shall have exclusive rights over this material. You may not release government information or documents without the express permission of the EAC.

**Supervision and Management.** The EAC Project Manager for this effort is Margaret Sims, EAC Research Specialist. Ms. Sims will provide taskings, and supervise, review and approve all work and performance.

**Period of Appointment, Compensation and Travel.**

The period of appointment under this contract is estimated at six months. The appointment shall constitute intermittent appointment (without a regularly scheduled tour of duty) per 5 C.F.R. §340.401(b). The consultant shall not incur overtime. The consultants shall **not** receive automatic adjustments of pay based upon 5 U.S.C. 5303.

**Deleted:** of nationwide statistics and methods of

**Deleted:** ying

**Deleted:** ing

**Deleted:** ng

**Deleted:** ;

**Deleted:** and identifying, deterring and investigating methods of voter intimidation.

**Deleted:** EAC is limited Due to the unavailability of internal staff,

**Deleted:** needs

**Deleted:**

**Deleted:** to

**Deleted:** and produce the required deliverables

Attorney-Client  
Privilege

010796  
Deliberative Process  
Privilege

The consultants are not eligible for sick and annual leave, nor compensation for work performed on federal holidays. The Consultant is expected to work 450 hours during the estimated six month appointment period. These hours must be distributed evenly over the period so that the Consultant is working approximately, but no more than 20 hours per week. The consultant shall be paid at a rate of \$111 per hour. The dates of performance are flexible but shall be based upon the needs of the project and the EAC. The project at issue is sought to be completed within the sixth month period. The period of appointment shall continue until the project, outlined below, is completed.

Consultant's duty station shall be his/her home or place of business. The consultant has access to and shall supply common office equipment to include telecommunications, internet, a computer, office supplies, facsimile machine and common workplace software (including Microsoft Word and Excel). Other resources will be provided by the EAC as needed and at its discretion.

The Consultant is required to travel on a periodic, as needed basis, throughout the duration of their appointment. All travel must be pre-approved by the EAC per Federal Travel Regulations and EAC policy. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, proper incidental expenses, and per diem while on official, pre-approved EAC travel.

#### Areas of Responsibility

1. Develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections.
2. Using the description developed above, perform background research, including both Federal and State administrative and case law review, and a summation of current activities of key government agencies, civic and advocacy organizations regarding these topics. Deliver a written summary of this research and all source documentation.
3. Work in consultation with other EAC staff and the Commissioners to identify a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation. The Working Group will be provided with the results of Tasks 1 and 2 as background information. The consultant will be responsible for developing a discussion agenda and convene the Working Group with the objective of identifying promising avenues for future research by EAC.
4. The consultant shall be responsible for creating a report summarizing the findings of this preliminary research effort and Working Group deliberations. This report should include any recommendations for future research resulting from this effort.
5. Should the EAC decide to pursue one or more of the recommendations made in the report noted above, the consultant will be responsible for defining the

**Deleted:** Tasks

**Deleted:** Submit this description to the EAC for review and approval.

**Deleted:** in Task 1

**Deleted:** In consultation with EAC,

**Deleted:** Provide

**Deleted:** t

**Deleted:** D

**Deleted:** Prepare

**Deleted:** Task 4

**Deleted:** C

**Deleted:** shall

**Deleted:** c

appropriate project scope(s) and preparing Statement(s) of Work sufficient for use in a competitive procurement.

#### Compensation Procedures

Compensation shall be made for work done by submitting invoices. Invoices shall be submitted on a monthly basis. These invoices shall state the number of labor hours that have been expended. Invoices shall be delivered to Ms. Margaret Sims for review and Ms. Diana Scott, Administrative Officer, U.S. Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington DC 20005. Compensation for travel shall be submitted by travel voucher consistent with federal travel regulation and EAC requirements.

#### Termination

This consultant contract can be terminated without cause in advance of the current end date by two weeks' notice in writing by either of the parties.

#### Estimated Project Timetable.

Deliverable	Due Date
Project work plan	10 days after contract award
Progress reports	monthly
Description of voting fraud and voter intimidation	October 2005
Summary of background research and associated source documentation	January 2006
Convene working group	February 2006
Summary report describing findings and recommendations for future EAC research	March 2006
Statement(s) of Work for future research project(s)	TBD

**Deleted:** e

**Deleted:** to issue

**Deleted:** Special Considerations¶

¶ **Work for Hire.** The services performed under the terms of this agreement are considered "work for hire," and any intellectual property or deliverables, including but not limited to research, policies, procedures, manuals, and other works submitted; or which are specified to be delivered; or which are developed or produced and paid for by EAC, shall be owned exclusively by EAC, including copyright. EAC or its assignees have the exclusive right to reproduce all work products from this agreement without further payment to the Contractor.¶

¶ **Acceptance of Work Product.** The EAC Project Manager for this effort is Margaret Sims, EAC Research Specialist, who will review and approve all work.¶

¶ **Period of Performance and Compensation¶**

¶ The period of performance for this contract is six months, with a cost ceiling of \$50,000 for labor. The Consultant is expected to work at least 450 hours during this period. These hours must be distributed evenly over the period so that the Consultant is working approximately, but no more than 20 hours per week at a rate of \$111 per hour. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, if required. Contractor's duty station shall be his/her place of business.¶

¶ The Consultant is required to travel to the EAC Washington, D.C. offices on a periodic, as needed basis, throughout the duration of the contract. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, other approved incidental expenses, and per diem costs while working on-site at the EAC offices. A total of \$5,000 has been allocated ... [1]

**Formatted:** Font: Bold

**Deleted:** Invoicing

**Deleted:** may

**Deleted:** based

**Deleted:** upon

**Deleted:** Expenses claimed for reimbursement shall be itemized with appropriate receipts provided.

**Deleted:** Contract

**Deleted:** ¶

**Deleted:** Deliverables and Timetable

Work for Hire. The services performed under the terms of this agreement are considered "work for hire," and any intellectual property or deliverables, including but not limited to research, policies, procedures, manuals, and other works submitted; or which are specified to be delivered; or which are developed or produced and paid for by EAC, shall be owned exclusively by EAC, including copyright. EAC or its assignees have the exclusive right to reproduce all work products from this agreement without further payment to the Contractor.

Acceptance of Work Product. The EAC Project Manager for this effort is Margaret Sims, EAC Research Specialist, who will review and approve all work.

### **Period of Performance and Compensation**

The period of performance for this contract is six months, with a cost ceiling of \$50,000 for labor. The Consultant is expected to work at least 450 hours during this period. These hours must be distributed evenly over the period so that the Consultant is working approximately, but no more than 20 hours per week at a rate of \$111 per hour. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, if required. Contractor's duty station shall be his/her place of business.

The Consultant is required to travel to the EAC Washington, D.C. offices on a periodic, as needed basis, throughout the duration of the contract. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, other approved incidental expenses, and per diem costs while working on-site at the EAC offices. A total of \$5,000 has been allocated for reimbursement for travel and other allowable expenses.

Calendar Entry

## Meeting

☐ Notify me



☐ Mark Private

☐ Pencil In

<b>Subject</b>	Teleconference with Voting Fraud Research Contractors
----------------	---

<b>Chair</b>	Margaret Sims/EAC/GOV
--------------	-----------------------

<b>When</b>	<b>Starts</b>	Wed 10/05/2005	04:00 PM	1 hour
	<b>Ends</b>	Wed 10/05/2005	05:00 PM	

<b>Where</b>	<b>Location</b>	Peggy's Office
--------------	-----------------	----------------

<b>Invitees</b>	<b>Required (to)</b>	
	<b>Optional (cc)</b>	Gavin S. Gilmour/EAC/GOV@EAC

<b>Categorize</b>	
-------------------	--

<b>Description</b>	
--------------------	--

<b>Your Notes</b>	
-------------------	--

010800

Margaret Sims /EAC/GOV  
10/05/2005 02:41 PM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Statement of Work to be circulated to the voting  
fraud/voter intimidation consultant candidates

----- Forwarded by Margaret Sims/EAC/GOV on 10/05/2005 02:42 PM -----

Karen Lynn-Dyson/EAC/GOV  
08/17/2005 04:29 PM

To Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC  
Thomas R. Wilkey/EAC/GOV@EAC, Margaret  
cc Sims/EAC/GOV@EAC, Diana Scott/EAC/GOV@EAC, Juliet  
E. Thompson/EAC/GOV@EAC  
Subject Statement of Work to be circulated to the voting fraud/voter  
intimidation consultant candidates

Nicole-

Attached please find the Statement of Work which should be sent to each of the three candidates who are being considered for the consulting position:

Steve A.  
Tova W.  
Job S.

Please be certain they are sent separately and not collectively to all three and that it is sent by COB today.

Thanks so much for your help.

K



voterfraud project consultants.doc

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

010801

## **EAC CONTRACT #05-66 Consulting Services to Assist EAC in the Development of a Voting Fraud and Voter Intimidation Project**

### **Background**

Section 241 of HAVA lists a number of election administration topics on which the U.S. Election Assistance Commission may elect to do research. In particular, Section 241(b) (6) and (7) state the two topics of nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices; and identifying, deterring and investigating methods of voter intimidation. The EAC Board of Advisors has recommended that the EAC make research on these topics a high priority.

Due to the unavailability of internal staff, EAC needs to obtain consulting services to conduct a preliminary examination of these topics to determine if a larger research project might be warranted. If so, the consultant would also be tasked to define the scope of the project and prepare a Statement of Work for the EAC to use for a subsequent competitive procurement. To promote a balanced and non-partisan approach to this effort, EAC is contracting with two consultants, who will work jointly to perform the work described below and produce the required deliverables.

### **Tasks**

1. Develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections. Submit this description to the EAC for review and approval.
2. Using the description developed in Task 1, perform background research, including both Federal and State administrative and case law review, and a summation of current activities of key government agencies, civic and advocacy organizations regarding these topics. Deliver a written summary of this research and all source documentation.
3. In consultation with EAC, identify a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation. Provide the Working Group with the results of Tasks 1 and 2 as background information. Develop a discussion agenda and convene the Working Group with the objective of identifying promising avenues for future research by EAC.
4. Prepare a report summarizing the findings of this preliminary research effort and Working Group deliberations. This report should include any recommendations for future research resulting from this effort.

010802

**Deliberative Process  
Privilege**



5. Should the EAC decide to pursue one or more of the Task 4 recommendations, Consultant shall define appropriate project scope(s) and prepare Statement(s) of Work sufficient to issue for competitive procurement.

### **Special Considerations**

Work for Hire. The services performed under the terms of this agreement are considered "work for hire," and any intellectual property or deliverables, including but not limited to research, policies, procedures, manuals, and other works submitted; or which are specified to be delivered; or which are developed or produced and paid for by EAC, shall be owned exclusively by EAC, including copyright. EAC or its assignees have the exclusive right to reproduce all work products from this agreement without further payment to the Contractor.

Acceptance of Work Product. The EAC Project Manager for this effort is Margaret Sims, EAC Research Specialist, who will review and approve all work.

### **Period of Performance and Compensation**

The period of performance for this contract is six months, with a fixed price ceiling of \$50,000 for labor. The Consultant is expected to work at least 450 hours during this period. The EAC suggests that these hours be distributed evenly over the period so that the Consultant is working approximately 20 hours per week. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, if required.

The Consultant is required to travel to the EAC Washington, D.C. offices on a periodic, as needed basis, throughout the duration of the contract. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, other approved incidental expenses, and per diem costs while working on-site at the EAC offices. A total of \$5,000 has been allocated for reimbursement for travel and other allowable expenses.

### **Invoicing**

Invoices may be submitted monthly in equal payments for labor. Expenses claimed for reimbursement shall be itemized with appropriate receipts provided. Invoices shall be delivered to Ms. Diana Scott, Administrative Officer, U.S. Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington DC 20005.

### **Contract Termination**

This contract can be terminated in advance of the current end date by two weeks' notice in writing by either of the parties.

**Deliverables and Timetable**

Deliverable	Due Date
Project work plan	10 days after contract award
Progress reports	monthly
Description of voting fraud and voter intimidation	October 2005
Summary of background research and associated source documentation	January 2006
Convene working group	February 2006
Summary report describing findings and recommendations for future EAC research	March 2006
Statement(s) of Work for future research project(s)	TBD

## **Statement of Work**

### **Assistance with developing an Election Assistance Commission (EAC) Voting Fraud and Voter Intimidation Project**

**(Job Serebrov)**

## **Background**

Section 241 of HAVA enumerates a number of periodic studies of election administration issues in which the U.S. Election Assistance Commission may elect to engage. In general “On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b)”

Sections 241(b) (6) and (7) list the following election administration issues:

(6) Nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices.

(7) Identifying, deterring and investigating methods of voter intimidation.

Building on this HAVA reference to studies of voting fraud and voter intimidation, the EAC Board of Advisors has indicated that further study of these issues to determine how the EAC might respond to them is a high priority.

The U.S. Election Assistance Commission (EAC) seeks to identify one or more senior-level project consultants to develop various project activities and studies related to voting fraud and voter intimidation affecting Federal elections.

The consultant(s) must have knowledge of voting fraud and voter intimidation along with an understanding of the complexities, nuances and challenges which surround the topics. The EAC is particularly interested in candidates with experience in elections, with public policy and with the law. The consultant (s) must be able to demonstrate an ability to approach the issues of voting fraud and voter intimidation in a balanced, nonpartisan fashion.

## **Duties**

The consultant(s), whose contract would run for the period September-February, 2005, would be responsible for the following.

1. Identifying what constitutes voting fraud and voter intimidation affecting Federal elections.
2. Performing background research, including Federal and state-by state administrative and case law review related to voting fraud and voter intimidation, and a review of current voting fraud and voter intimidation activities taking place with key government agencies, civic and advocacy organizations. A written summary of this research, and a copy of any source documentation used, will be presented to EAC.
3. Identifying, in consultation with EAC, and convening a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation. The working group's goals and objectives and meeting agendas will be vetted with key EAC staff.
4. Developing a project scope of work and a project work plan related to voting fraud and voter intimidation. The consultants (s) will develop a draft scope of work and project work plan for EAC's consideration based on research into the topics, the deliberations and findings of the working group, and the consultants' understanding of EAC's mission and agency objectives.
5. Authoring a report summarizing the key findings of this preliminary study of voting fraud and voter intimidation. The report will also include suggestions for specific activities that EAC may undertake to address these topics.

From this initial research and exploration of these topics the consultant (s) may be retained to help oversee follow-on research projects and contracts EAC may pursue on the topics of voting fraud and voter intimidation.

## **Special Considerations**

Work for Hire. The services performed under the terms of this agreement are considered "work for hire," and any intellectual property or deliverables, including but not limited to, research, policies, procedures, manuals, and other works submitted; or which are specified to be delivered; or which are developed or produced and paid for by EAC, shall be owned exclusively by EAC, including copyright. EAC or its assignees have the exclusive right to reproduce all work products from this agreement without further payment to the Contractor.

## **Terms and Conditions**

The period of performance for this consulting contract is six months, with a fixed price ceiling of \$XXXXXX for labor. The consultant (s) is expected to work at least 200 hours in performing this work. The EAC estimates that the most efficient distribution of these hours would be as follows: XXXXXX. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, as required.

The Consultant is required to travel to the EAC Washington, D.C. offices on a periodic, as needed basis, throughout the duration of the contract. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, other approved incidental expenses, and per diem costs while working on-site at the EAC offices. An estimated \$XXXXXX has been allocated for reimbursement for travel and other allowable expenses.

## **Invoicing**

Invoices may be submitted monthly in equal payments for labor. Expenses claimed for reimbursement shall be itemized with appropriate receipts provided. Invoices shall be delivered to Ms. Diana Scott, Administrative Officer, U.S. Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington DC 20005.

## **Deliverables and Timetable**

Deliverable	Due Date
Draft project work plan (Phase I)	ASAP after award
Progress Reports to Contracting Officer's Representative (COR)	Monthly
A written summary of background research on voting fraud and voter intimidation.	TBD
Identifying and convening a working group knowledgeable about voting fraud and voter intimidation.	TBD
Developing a project scope of work and project work plan ( Phase II)	TBD
Summary report describing key findings of this preliminary study of voting fraud and	TBD

voter intimidation	

## **Statement of Work**

### **Assistance with developing an Election Assistance Commission (EAC) Voting Fraud and Voter Intimidation Project**

**(Tova Wang)**

## **Background**

Section 241 of HAVA enumerates a number of periodic studies of election administration issues in which the U.S. Election Assistance Commission may elect to engage. In general “On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b)”

Sections 241(b) (6) and (7) list the following election administration issues:

(6) Nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices.

(7) Identifying, deterring and investigating methods of voter intimidation.

Building on this HAVA reference to studies of voting fraud and voter intimidation, the EAC Board of Advisors has indicated that further study of these issues to determine how the EAC might respond to them is a high priority.

The U.S. Election Assistance Commission (EAC) seeks to identify one or more senior-level project consultants to develop various project activities and studies related to voting fraud and voter intimidation affecting Federal elections.

The consultant(s) must have knowledge of voting fraud and voter intimidation along with an understanding of the complexities, nuances and challenges which surround the topics. The EAC is particularly interested in candidates with experience in elections, with public policy and with the law. The consultant (s) must be able to demonstrate an ability to approach the issues of voting fraud and voter intimidation in a balanced, nonpartisan fashion.

## **Duties**

The consultant(s), whose contract would run for the period September-February, 2005, would be responsible for the following.

1. Identifying what constitutes voting fraud and voter intimidation affecting Federal elections.
2. Performing background research, including Federal and state-by state administrative and case law review related to voting fraud and voter intimidation, and a review of current voting fraud and voter intimidation activities taking place with key government agencies, civic and advocacy organizations. A written summary of this research, and a copy of any source documentation used, will be presented to EAC.
3. Identifying, in consultation with EAC, and convening a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation. The working group's goals and objectives and meeting agendas will be vetted with key EAC staff.
4. Developing a project scope of work and a project work plan related to voting fraud and voter intimidation. The consultants (s) will develop a draft scope of work and project work plan for EAC's consideration based on research into the topics, the deliberations and findings of the working group, and the consultants' understanding of EAC's mission and agency objectives.
5. Authoring a report summarizing the key findings of this preliminary study of voting fraud and voter intimidation. The report will also include suggestions for specific activities that EAC may undertake to address these topics.

From this initial research and exploration of these topics the consultant (s) may be retained to help oversee follow-on research projects and contracts EAC may pursue on the topics of voting fraud and voter intimidation.

## **Special Considerations**

Work for Hire. The services performed under the terms of this agreement are considered "work for hire," and any intellectual property or deliverables, including but not limited to, research, policies, procedures, manuals, and other works submitted; or which are specified to be delivered; or which are developed or produced and paid for by EAC, shall be owned exclusively by EAC, including copyright. EAC or its assignees have the exclusive right to reproduce all work products from this agreement without further payment to the Contractor.



### **Terms and Conditions**

The period of performance for this consulting contract is six months, with a fixed price ceiling of \$XXXXXX for labor. The consultant (s) is expected to work at least 200 hours in performing this work. The EAC estimates that the most efficient distribution of these hours would be as follows: XXXXXX. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, as required.

The Consultant is required to travel to the EAC Washington, D.C. offices on a periodic, as needed basis, throughout the duration of the contract. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, other approved incidental expenses, and per diem costs while working on-site at the EAC offices. An estimated \$XXXXXX has been allocated for reimbursement for travel and other allowable expenses.

### **Invoicing**

Invoices may be submitted monthly in equal payments for labor. Expenses claimed for reimbursement shall be itemized with appropriate receipts provided. Invoices shall be delivered to Ms. Diana Scott, Administrative Officer, U.S. Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington DC 20005.

### **Deliverables and Timetable**

Deliverable	Due Date
Draft project work plan (Phase I)	ASAP after award
Progress Reports to Contracting Officer's Representative (COR)	Monthly
A written summary of background research on voting fraud and voter intimidation.	TBD
Identifying and convening a working group knowledgeable about voting fraud and voter intimidation.	TBD
Developing a project scope of work and project work plan ( Phase II)	TBD
Summary report describing key findings of this preliminary study of voting fraud and	TBD

voter intimidation	

Gavin S. Gilmour/EAC/GOV  
10/06/2005 03:30 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Voter Fraud Contract

Peggy,

shall we set up a meeting... When, etc...

Gavin S. Gilmour  
Associate General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

----- Forwarded by Gavin S. Gilmour/EAC/GOV on 10/06/2005 03:31 PM -----

Thomas R. Wilkey/EAC/GOV  
10/06/2005 11:57 AM

To Gavin S. Gilmour/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV, Margaret Sims/EAC/GOV, Juliet E.  
Thompson/EAC/GOV  
cc Carol A. Paquette/EAC/GOV  
Subject Re: Voter Fraud Contract

Please do

-----  
Sent from my BlackBerry Wireless Handheld  
Gavin S. Gilmour

**From:** Gavin S. Gilmour  
**Sent:** 10/06/2005 11:50 AM  
**To:** Karen Lynn-Dyson; Margaret Sims; Juliet Thompson; Thomas Wilkey  
**Cc:** Carol Paquette  
**Subject:** Voter Fraud Contract

Karen/Tom,

Peggy held a meeting with voting fraud/intimidation contractors. In this meeting they noted that despite the fact that the contract requires them to perform legal research, they do not have the means to do so (no access to Westlaw, etc..). They noted that in discussions with the two of you, they were told that the EAC would provide them access to West Law and, possibly, a law clerk with office space. None of this is noted in the contract. They claim to have never seen the contract? Do we have their response to our RFP? We will all need to meet to clarify this.

GG

Gavin S. Gilmour  
Associate General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005

010813

(202) 566-3100

Gavin S. Gilmour/EAC/GOV  
10/06/2005 11:50 AM

To Karen Lynn-Dyson/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Thomas R.  
cc Carol A. Paquette/EAC/GOV@EAC  
bcc  
Subject Voter Fraud Contract

Karen/Tom,


Peggy held a meeting with voting fraud/intimidation contractors. In this meeting they noted that despite the fact that the contract requires them to perform legal research, they do not have the means to do so (no access to Westlaw, etc.). They noted that in discussions with the two of you, they were told that the EAC would provide them access to West Law and, possibly, a law clerk with office space. None of this is noted in the contract. They claim to have never seen the contract? Do we have their response to our RFP? We will all need to meet to clarify this.

GG

Gavin S. Gilmour  
Associate General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

010815

Gavin S. Gilmour/EAC/GOV  
11/30/2005 10:19 AM

To Margaret Sims/EAC/GOV@EAC  
cc jthompson@eac.gov  
bcc  
Subject Re: Definition of Voting Fraud and Voter Intimidation 

Peggy,

Per our discussion, I have some initial concerns regarding the definitions that have been proposed.

1. Fraud is a legal term of art. Fraud is an intentional act or omission (i.e. actual fraud or constructive fraud) of misrepresentation or deceit. There is no such thing as defacto fraud or quasi fraud. Fraud must be intentional.... negligence alone is not fraud.

The general definition of voter fraud must concise and universally applicable (this in the challenging part). After this definition is created and intellectually tested, one can then create examples and explanations. These would 1) apply the definition to the entire election process (from beginning to end) and (2) apply it to action by voters, 3rd parties and election officials. Through this process a determination may be made regarding whether three definitions are needed or just one.

2. The document has no definition of voter intimidation. What is voter intimidation and how does it differ from voter fraud? I assume this would also be an intentional act.

3. Definitions need to be concise and tight. Such definitions need to be able to be broken down into elements. **Each of these elements must have clear, applicable and enforceable meaning.** This can be a challenge. For example use of the term "any illegal act" is unclear, begs the question and suggests that fraud only occurs in the course of committing a related crime.

These are just my initial thoughts.

GG  
Gavin S. Gilmour  
Associate General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV  
11/30/2005 09:28 AM

To jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC  
cc  
Subject Definition of Voting Fraud and Voter Intimidation

Attached discusses the definitions that Job and Tova would like to use. I have already taken issue with the exclusion of all voter registration shenanigans and the inclusion of administrative mistakes. Would be pleased to have your feedback and, if possible, your assistance for 15 minutes of a teleconference today (3:30 PM to 3:45 PM). --- Peggy

010816



combined defining Fraud 11-18-05.doc

010817

“Fraud” should be defined as any illegal act that has a clear and direct distorting impact on the election results. It includes adding illegal votes and tampering with vote counts as well as actions such as voter intimidation and deceptive practices that serve to subtract legal votes. Illegally keeping certain voters from voting has the same distorting effect on election outcomes as ineligible voters casting ballots or some form of modern ballot box stuffing. Fraud may involve wrongdoing by individual voters, election workers or organized groups such as campaigns or political parties.

Vote fraud usually breaks down into three categories---intentional fraud, de facto fraud, and quasi-fraud. Research and investigation of fraud should focus on those forms of fraud that are known to have had true impacts on election outcomes.

“Intentional fraud” includes acts that are intentionally planned. Such forms of fraud include the following:

- Absentee/mail ballot fraud, e.g. coercing another voter’s choice, use of a false or other voter’s name and signature, destruction or misappropriation of an absentee or mail-in ballot
- Ex-felons knowingly and willingly casting illegal ballots
- Knowingly and willingly misleading an ex-felon about his or her right to vote
- Voting more than once
- Noncitizen voting
- Intimidating practices e.g. intimidating signs, inappropriate police presence, abusive/threatening treatment by poll workers or others that deter voters from voting
- Deceptive practices e.g. providing false information to voters about the voting process, such as when and/or where to vote, who is eligible to vote
- Fraud by election administrators in the handling or counting of ballots, misrepresentation of vote tallies
- Vote buying
- Addition or destruction of cast ballots by elections officials
- Intentional wrongful removal of eligible voters from voter registration lists
- Knowingly falsifying registration information pertinent to eligibility to cast a vote, e.g. residence, criminal status, etc.

The second type of fraud is de facto fraud. This occurs when the intent to commit fraud is lacking, but the party or parties’ actions results in fraud nonetheless. De facto fraud more often is a result of a misapplication of election statutes or the application of a long established practice or tradition in a way that contradicts the intent of the statute. Examples of de facto fraud include the abusive use of challengers to voter registrations or to voters’ eligibility at the polls and wrongful purging of voter lists.

The last form of fraud, “quasi-fraud,” is the most difficult to classify as such because the correct law (case law or legislative act) is applied but the result is to deprive voters of their electoral rights. This type of fraud is also the most difficult to catch because it requires both legal electoral expertise and almost always occurs on the day of the election. One example of this is Arkansas supreme court case law making election

010818



statutes mandatory before an election but discretionary after. The discretion is left up to the county board of election commissioners. These are not elected but are either the chairs of the two main political parties or a person elected by the county central committee should the chair decide not to serve. The result is that election statutes are never enforced after the election. It therefore permits past patterns of fraud to persist.

Two areas that are of major concern but do not come within the purview of fraud for the purposes of this type of research are registration forms in the name of another or fake person(s), which from the evidence do not usually result in illegal votes; and electronic vote machine tampering, for which there is as of now no definitive evidence has taken place in a U.S. election.

# BEST PRACTICES

## **The importance of clarity**

EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. Does the provisional ballot system:

1. Distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
2. Place administrative demands on local jurisdictions that are realistically related to the staff and other resources available?
3. Display variation within the state great enough to cause concern that the system may not be administered uniformly from county to county?

## **Lessons of litigation for achieving clarity**

Look to litigation from the 2004 election to shape new statutes or regulations that will increase the clarity of provisional voting procedures, increase predictability, and bolster confidence in the system.

1. Litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted.
2. Lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot.

## EAC should recommend to the states that they:

- ☐ Promulgate clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards.
  - ☐ Provide materials for local jurisdictions to train poll workers on such procedures as how to locate polling places for potential voters who show up at the wrong place.
  - ☐ Make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.
- Provide poll workers the training they need to understand their duty to give those voters a provisional ballot.

## **Assess each stage of the provisional voting process**

### **Before the election**

- Clear information for voters on websites and in sample ballots.
- Training materials in every jurisdiction make poll workers familiar with the options available to voters.

### **At the polling place**

- Design of provisional ballot
- Estimate supply of provisional ballots needed at polling places

### **Evaluating provisional ballots**

- Define and adopt a reasonable period for voters who lack ID or other eligibility information bearing to provide it.
- A voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location.
- Follow written procedure or checklist to record why a provisional ballot is rejected.

## **Assess each stage of the provisional voting process**

### **Post-election**

Best practice is for states to consider how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available in presidential elections.

Provide timely information to voters about the disposition of their provisional ballot.

- Are they now registered for future elections?
- If not, what they need to do to become registered?

### **Conclusion**

This systematic analysis constitutes a quality improvement program for provisional voting, one that holds promise for every state.

# U. S. Election Assistance Commission

May 2006



**Briefing for**

**May 23 , 2006**



# Provisional Voting

## Findings and Recommendations



---

# EAGLETON INSTITUTE OF POLITICS

---

Rutgers, The State University of New Jersey

**MORITZ COLLEGE OF LAW**    **THE OHIO STATE UNIVERSITY**

**Dr. Ruth B. Mandel, Director. Eagleton Institute of Politics**

Board of Governors Professor of Politics

Principal Investigator and Chair of the Project Management Team

**Edward B. Foley, Robert M. Duncan/Jones Day Designated Professor of Law**

The Moritz College of Law

Director of Election Law @ Moritz

**Ingrid Reed. Director of the New Jersey Project**

The Eagleton Institute of Politics

**Daniel P. Tokaji, Assistant Professor of Law**

The Moritz College of Law

**John Weingart, Associate Director**

The Eagleton Institute of Politics

**Thomas M. O'Neill, Consultant**

The Eagleton Institute of Politics

Project Director

## **QUESTIONS RAISED BY THE EAC**

- 1. How did states prepare for HAVA's provisional voting requirements?**
- 2. How did preparation and performance vary between states that had previously had some form of Provisional Ballot and those that did not?**
- 3. How did litigation affect the implementation of Provisional Voting?**
- 4. How effective was provisional voting in enfranchising qualified voters?**
- 5. Did State and local processes provide for consistent counting of provisional ballots?**
- 6. Did local election officials have a clear understanding of how to implement provisional voting?**

## **TO ANSWER THOSE QUESTIONS**

- ☐ **Surveyed 400 local election officials**
- ☐ **Reviewed the EAC's Election Day Survey**
- ☐ **Analyzed states' experience with provisional voting:**
  - use of statewide registration database**
  - treatment of out-of-precinct ballots**
  - use of different approaches to voter ID**
  - consistency**
  - time period allowed for ballot evaluation**
- ☐ **Collected provisional voting statutes and regulations**
- ☐ **Analyzed litigation**

## **Variation among the states**

☐ In 2004 nationwide about 1.9 million provisional ballots cast, 1.2 million, or just over 63%, were counted.

☐ The percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%.

☐ The portion of provisional ballots cast that were counted ranged from 96% in Alaska to 6% in Delaware.

## **Some sources of variation among states**

### **Experience**

Share of provisional ballots in the total vote was 6 times greater in states that had used provisional ballots before than in states where the provisional ballot was new.

### **Administrative Arrangements**

Time to evaluate ballots

- States that provided less than one week counted an average of 35.4% of their ballots.
- States that permitted more than 2 weeks counted 60.8%.

Voter registration data bases

- States with voter registration databases counted an average of 20% of the provisional ballots cast.
- States without databases counted 44%.]



## **Variation within states**

Rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state.

Resources available to administer provisional voting varied.

- The Election Day Study found that staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories.

- Small, rural jurisdictions and large, urban jurisdictions reported higher rates of an inadequate number of poll workers

- Jurisdictions in poor areas reported more inactive voter registrations and more provisional ballots cast.

- Richer areas had more poll workers per polling place and reported lower rates of staffing problems per precinct.

# **1. How did states prepare for HAVA's provisional voting requirements?**

---

**Most election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states.**

**Almost all provided training or written instruction to precinct-level poll workers on how to administer provisional ballots.**

- Only about 1 in 10 made available to poll workers a voter registration database.**

- Almost equally rare were training and written procedures for poll workers on the counting of provisional ballots.**

## **2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?**

---

**Local election officials in the “old” states felt more confident.**

**18 states were new to provisional voting; 25 others had experience.**

### **“New” state officials felt:**

**-- Voters did not receive enough information about where to cast a provisional ballot in order to be counted.**

**-- More funding was needed to educate voters about their rights to cast a provisional ballot.**

**Provisional ballots in “old states” : more than 2% of the total vote, 4 times the proportion in “new” states.**

**Counting provisional ballots in the final vote, the “old” states averaged 58% nearly double the average (33%) in “new” states.**

### **Question 3: How did litigation affect the implementation of Provisional Voting?**

---

#### **Pre-election litigation clarified voters' rights to:**

- **Sue in federal court to remedy violations of HAVA**
- **Receive provisional ballots, even though they would not be counted**
- **Be directed to the correct precinct**
- **Most pre-election litigation occurred too late to influence how states implemented provisional voting.**

#### **4. How effective was provisional voting in enfranchising qualified voters?**

---

**Provisional ballots enfranchised 1.2 million voters, or 1.01% of turnout, who otherwise would have been turned away.**

**The number of voters who could be helped by provisional voting may be about 2.5 – 3 million. Provisional voting might be about 50% effective.**

**There is room for improvement.**

**Legislative activity gives evidence that states were not satisfied with the effectiveness of their provisional voting systems.**

**Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the “new” states.**

**Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

---

Little consistency existed among and within states.

The use of provisional ballots was not distributed evenly across the country. A few states accounted for most of the ballots cast.

Share of provisional ballots in the total vote was six times greater in experienced states than in new states.

More rigorous the state's Voter ID requirements the smaller the percentage of provisional ballots that were counted.

"New" states with registration databases counted 20% of the ballots cast. Those without databases counted more than double that rate (44%).

**Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

**In-precinct versus out-of-precinct states had different outcomes.**

**States that allowed out-of-precinct ballots counted 56% of the provisional ballots.**

**States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.**

**In “old” states, this difference was greater.**

**52% of ballots cast were counted in states requiring in-district ballots, 70% were counted in those allowing out-of-precinct ballots.**

## Question 5: Did State and local processes provide for consistent counting of provisional ballots?

States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.

---

14 states permitted less than 1 week :	35.4%
15 states permitted 1 – 2 weeks:	47.1%
14 states permitted more than 2 week:	60.8%.

Effect felt most strongly in states where more than 1% of the overall turnout was of provisional ballots.

---

Less than 1 week:	58.6%
1 – 2 weeks:	65.0%
More than 2 weeks:	73.8%.



**Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

### **Conclusions**

**States have latitude in how they meet HAVA requirements.**

**A considerable degree of variation among the states is to be expected.**

**If that variation stems from differences in political culture among the states, it is likely to persist. If it reflects a learning curve for “new” states, consistency may increase more quickly.**

**Question 6: Did local election officials have a clear understanding of how to implement provisional voting?**

---

**8 out of 10 county-level elections officials reported receiving instructions from their state government**

**4 out of 10 local election officials felt poll workers needed more training to understand their responsibilities**

**Objectively, how well did the process appear to be managed?**

**Lack of consistency among and within states indicates wide differences in understanding by election officials.**

**The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.**

# BEST PRACTICES

## **The importance of clarity**

EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. Does the provisional ballot system:

1. Distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
2. Place administrative demands on local jurisdictions that are realistically related to the staff and other resources available?
3. Display variation within the state great enough to cause concern that the system may not be administered uniformly from county to county?

# **Lessons of litigation for achieving clarity**

010847

Look to litigation from the 2004 election to shape new statutes or regulations that will increase the clarity of provisional voting procedures, increase predictability, and bolster confidence in the system.

1. Litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted.
2. Lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot.

## EAC should recommend to the states that they:

☐ Promulgate clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards.

☐ Provide materials for local jurisdictions to train poll workers on such procedures as how to locate polling places for potential voters who show up at the wrong place.

☐ Make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.

-- Provide poll workers the training they need to understand their duty to give those voters a provisional ballot.

## **EAC should recommend quality improvement**

Begin a systematic quality improvement program by collecting data on the provisional voting process. Data collected should include:

- ☐ Specific reasons why provisional ballots were not counted
- ☐ Measures of variance among jurisdiction
- ☐ Time required to evaluate ballots by jurisdiction
- ☐ Provisional votes cast and counted by jurisdiction

## **Assess each stage of the provisional voting process**

### **Before the election**

- Clear information for voters on websites and in sample ballots.
- Training materials in every jurisdiction make poll workers familiar with the options available to voters.

### **At the polling place**

- Design of provisional ballot
- Estimate supply of provisional ballots needed at polling places

### **Evaluating provisional ballots**

- Define and adopt a reasonable period for voters who lack ID or other eligibility information bearing to provide it.
- A voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location.
- Follow written procedure or checklist to record why a provisional ballot is rejected.



## **Assess each stage of the provisional voting process**

### **Post-election**

Best practice is for states to consider how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available in presidential elections.

Provide timely information to voters about the disposition of their provisional ballot.

- Are they now registered for future elections?
- If not, what they need to do to become registered?

# **U. S. Election Assistance Commission**

**May 2006**

200605

010852



"Tom O'Neill"

07/20/2005 11:33 AM

To jthompson@eac.gov

cc

bcc

Subject

Julie,

I just called Dan Tokaji at Moritz and found that he is traveling to a meeting in New Orleans today. I'll try to catch him by Blackberry to review your request for a presentation at the Pasadena meeting.

Below is the editorial from today's New York Times.

Tom

July 20, 2005

## Georgia's Undemocratic Voter Law

Georgia has passed a disturbing new law that bars people from voting without government-issued photo identification and seems primarily focused on putting up obstacles for black and poor voters. The Justice Department is now weighing whether the law violates the Voting Rights Act. Clearly it does, and it should be blocked from taking effect.

The new law's supporters claim that it is an attempt to reduce voter fraud, but Secretary of State Cathy Cox has said she cannot recall a single case during her tenure when anyone impersonated a voter.

In the same period, she says, there have been numerous allegations of fraud involving absentee ballots. But the Georgia Legislature has passed a law that focuses on voter identification while actually making absentee ballots more prone to misuse.

The new law will make it harder for elderly Georgians to vote as well. It has been estimated that

010853

more than 150,000 older Georgians who voted in the 2004 presidential election do not have driver's licenses, and are unlikely to have other acceptable forms of identification. According to census data, black Georgians are far less likely to have access to a car than white Georgians, so they are at a distinct disadvantage when driver's licenses have an important role in proving people's eligibility to vote.

Under the Voting Rights Act, Georgia's law must be cleared by the Justice Department before it can take effect. There can be little doubt that the law would have "the effect of denying or abridging the right to vote on account of race," and it therefore must be rejected. But in the current Justice Department, there is a real danger that this decision will be based on politics rather than law.

Georgia's new identification requirement is part of a nationwide drive to erect barriers at the polls. Indiana also recently passed a new photo-identification requirement, and several other states, including Ohio, are considering the addition of such requirements.

There are many steps states can take to reduce election fraud. But laws that condition voting on having a particular piece of identification that many eligible voters do not possess have no place in a democracy.

• Copyright 2005 The New York Times Company

Tom O'Neill

010854



"Tom O'Neill"

07/18/2005 12:29 PM

To jthompson@eac.gov

cc

bcc

Subject Voter ID in Arizonaz

Julie,

The article below is an excellent summary of the current debate over Voter ID in Arizona. Reading it might make good preparation for the July 28 public meeting –it nails the issues in dispute very clearly.

Tom O'Neill

## Plan to set Prop. 200's vote rules draws fire

*Dispute involves how many, what type of ID*

**Elvia Díaz and Robbie Sherwood**

The Arizona Republic

Jul. 18, 2005 12:00 AM

County election officials from across Arizona are speaking out against a new plan to comply with Proposition 200's voter-identification requirement, predicting it would result in long lines at the polls, create trouble recruiting workers and force some registered voters to be turned away.

Secretary of State Jan Brewer, a Republican, and Attorney General Terry Goddard, a Democrat, negotiated the new rules this month, but they still need approval from Gov. Janet Napolitano and the U.S. Justice Department.

Proposition 200 carried a vague requirement that voters produce identification to cast a ballot in person. But Brewer, Goddard and Napolitano have been bickering over how to implement the mandate. The agreement is an attempt to settle some of their differences.

The plan calls for voters to be given more ways to prove their identity than under previous proposals. But those lacking Proposition 200-compliant identification would not be able to cast even a provisional ballot, despite their names appearing on the voter registration list. Under the old rules, voters whose names were left off of the roster in their voting district were allowed to cast a provisional ballot without providing identification. Workers verified the votes before they were counted.

County election officials and Latino leaders say that voters whose names appear on the rolls, but who don't carry identification or who may have had it lost or stolen, should be given a provisional ballot at the polls so their identity can be verified later. That way, registered voters who may lack the proper ID would not be disenfranchised.

Under the proposed new rules, voters would need to show one piece of photo identification with a current address or at least two forms of non-photo ID containing a current address. Those could include utility and cellphone bills, tribal enrollment and Indian census cards, or bank and credit-union statements.

Pima County Recorder F. Ann Rodriguez said a plan that potentially could disenfranchise registered voters would be unconstitutional and could spark lawsuits. Rodriguez was among election officials from 10 of the state's 15 counties to express concerns or suggest changes to Brewer's proposal, according to documents obtained by *The Arizona Republic*.

"It's going to hurt people who tend to move a lot, young people who all live together with the utilities in just one

010855

name," Rodriguez said. "We have a few legislators who really don't know what we really do internally in conducting elections trying to create law where they don't know the total ramifications."

Rodriguez argued that any photo ID with a name and address, not just government-issued IDs, should be acceptable. And any mail delivered to a voter's registered address by the U.S. Postal Service should also be allowed to help prove a voter's identity.

Deputy Secretary of State Kevin Tyne, however, dismissed some of the criticisms as "mostly political."

"Some of them (county recorders) were opposed to Prop. 200 from the get-go," Tyne said. "This is a first draft. It's not a done deal."

## **Problems at the polls**

Coconino County Recorder Candy Owens concluded that even she would face problems meeting the voting provision.

"I approached this from a scientific method and looked at what I had in my own purse," Owens said in a letter to Brewer. "My driver's license is 1995 and has the wrong address on it, even though I have changed (it) in the system at DMV."

She added, "I have my voter- ID card and my checkbook and nothing else I have in my wallet has (an) address on it."

Rodriguez and other recorders also expressed anger that Brewer gave them only three working days to comment on the plan, unveiled June 30.

Rodriguez said the "unreasonably short time period" effectively excludes county officials from carefully considering and discussing the matter.

Others echoed Rodriguez's concerns, adding that the election procedures as outlined by Brewer would result in confusion among poll workers and ultimately deny many Arizona citizens the right to vote.

Penny L. Pew, Apache County elections director, said many of the 33,000 registered voters living on Native American lands could be disenfranchised under the proposed plan.

"In many instances, a person could travel over 50 miles to their polling place and not have proper ID and be turned away without voting," Pew said in a letter to Brewer.

## **Addressing the concerns**

Pew and others point to the difficulty of individuals in rural Arizona to obtain the type of ID that would be required. Also, many elderly citizens would be affected because they live with relatives and thus don't have identification with their names and address on it, Pew said. The solution? Let voters lacking proper ID cast a provisional ballot.

Goddard and Tyne said the proposed procedures are just a draft and that they are addressing the concerns raised by the county recorders.

"It's not the final draft," Goddard said, adding that Brewer made a good attempt to outline the initial guidelines. "We all want to see this done as quickly as possible so it can be tested."

The Proposition 200 provisions were supposed to go into effect before municipal elections earlier this year, but no agreement could be reached on how they would be carried out.

Approved by voters in November, Proposition 200 was designed to combat voting fraud, particularly among undocumented immigrants, and save the state millions annually by denying benefits to people in the country illegally.

So far, Arizonans have had to produce proof of citizenship only when registering to vote. They have not been required to present identification while voting in person.

## **Much work remains**

Goddard, Brewer and other key leaders worked out a plan but they agree much work remains to determine exactly what forms of ID cards will be acceptable to vote in person.

Goddard believes it is still possible to have the new guidelines in time for the Phoenix's Sept. 13 City Council elections so they could serve as a test run before the much larger elections next year.

But he acknowledged that the earliest voters could realistically be required to produce ID is during the November election when, for instance, Phoenix may have a runoff.

Rodriguez argued that Proposition 200 places no limitation on the types of acceptable photo identification. Limiting the forms of identification would affect the elderly, Native Americans and college students, she said.

For instance, many students and young adults live in apartments or college dorms with multiple tenants, and typically one person gets the utility bill, she said.

"Likewise, not all young adults choose to operate a car or obtain an DMV issued identification card," she said. "Those still living at home with their parents will not have any utilities issued in their names."

Ana Wayman-Trujillo, Yavapai County recorder, questions whether it would be necessary to do background checks on poll workers because they would have access to voters' personal information. It would be harder to recruit poll workers, usually hired to work just on Election Day.

"This obviously will slow down the process at the polls, with many constituents as well as poll workers getting frustrated and walking away from the polls," she said.

### **Latino leaders' concerns**

Arizona election officials aren't the only ones raising concerns about the voting requirements. Latino leaders say the requirements won't meet the federal voting rights laws because many eligible voters would be denied the right to cast a ballot.

"It going to be disastrous for Arizona," said Steve Reyes, an attorney with the Mexican American Legal Defense and Educational Fund. "It would disenfranchise the majority of Arizona voters regardless of race."

He suggests allowing provisional ballots. Reyes said those in charge of drafting the new rules have failed to seek the opinions of Arizonans in general and Latinos in particular.

Rep. Steve Gallardo, D-Phoenix, is also against the proposal, saying many elderly Arizonans, college students and Native Americans may lack the proper ID to vote.

"We all agree in protecting the integrity of our elections," said Gallardo, suggesting provisional ballots without ID are necessary to give eligible voters the chance to vote.

"The issue is how to do that without disenfranchising voters."

Gavin S. Gilmour/EAC/GOV  
01/22/2007 05:16 PM

To Bryan Whitener/EAC/GOV@EAC  
cc Jeannie Layson/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC, Thomas R.  
bcc

Subject Re: Response Requested - EAC voter ID report 

Is Eagleton submitting a report to the EAC or is Eagleton assisting us the development of an EAC report...? I suspect it is the latter. Any statement should reflect this... as should the "briefing."

GG

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

THIS MESSAGE IS FOR ITS INTENDED RECIPIENT ONLY. IT IS A PRIVILEGED DOCUMENT AND SHALL NOT BE RELEASED TO A THIRD PARTY WITHOUT THE CONSENT OF THE SENDER.

Bryan Whitener/EAC/GOV

Bryan Whitener /EAC/GOV  
01/22/2007 04:55 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC, Gavin S.  
Gilmour/EAC/GOV@EAC  
Subject Response Requested - EAC voter ID report

Karen,

We need to publish an FR notice early tomorrow regarding the next public meeting. In light of the recent matter regarding voter fraud, I want to be sure to accurately describe what's happening with the voter ID report item contained in the draft agenda. Please add some perspective about what will and will not be discussed and what, if any, action might be expected. The draft agenda says the following: "Presentation of Eagleton ID Report - "Best Practices to Improve Voter Identification Requirements," John Weingarten, Rutgers University (Time allotted 7-10 minutes; Q & A 5 min.)". What stage are we with this ? (preliminary, final, NOTA, etc.) Just trying to stay ahead of the curve,

Thanks,  
Bryan



Public Meeting, 2-08-07, Wash., Draft Agenda.doc

010858





## U.S. Election Assistance Commission Public Meeting Agenda

1225 New York Avenue, NW  
Suite 150  
Washington, DC  
Thursday, February 08, 2007  
10:00 AM – 1:00 PM EST

**Call to Order** (Chair Davidson) (1 minute)

**Pledge of Allegiance** (Chair Davidson) (1 minute)

**Roll Call** (1 minute)

**Adoption of Agenda** (Chair Davidson) (2 minutes)

**Welcoming Remarks** (Chair Davidson) (2-3 minutes)

### **OLD BUSINESS:**

- **Correction and Approval of Minutes from the December 07, 2006 Meeting** (Chair Davidson) (1-3 minutes)
- **Report of the Executive Director** (Thomas Wilkey) (5-15 minutes)

10:25 AM approximate time

### **NEW BUSINESS:**

- **Update on EAC/NIST Laboratory Accreditation Program**
  - Brian Hancock, EAC (Time allotted 7-10 minutes; Q & A 10 min.)
  - Mary Saunders, NIST (Time allotted 7-10 minutes; Q & A 10 min.)
- **Presentation of Eagleton ID Report – “Best Practices to Improve Voter Identification Requirements,”**
  - John Weingarten, Rutgers University (Time allotted 7-10 minutes; Q & A 5 min.)



**11:20 AM Break (10 minutes)**


- **EAC Audit Process**
  - **Curtis Crider, EAC Inspector General, (Time allotted 5-7 minutes; Q & A 5 min.)**
  - **Roger LaRouche, EAC Assistant Inspector General (Time allotted 5-7 minutes; Q & A 5 min.) Note: Curtis is asking Roger if he wants to participate since he has been at EAC so much longer.**
- **State Observations – EAC Program**
  - **Texas: Dan Glotzer, HAVA Grant Manager (Time allotted 7-10 minutes; Q & A 5 min.)**
  - **Awaiting recommendations by Curtis (Time allotted 7-10 minutes Q & A 5 min.)**

**Approximate time: 12:20 PM**

**Commissioners' Closing Remarks (Time allotted 20 minutes)**

**Adjournment (Approximately 12:45 PM)**

Gavin S. Gilmour/EAC/GOV  
11/28/2006 11:44 AM

To Jeannie Layson/EAC/GOV  
cc  
bcc  
Subject Re: Fw: FOIA Request 

that is how i read it...

gg

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

THIS MESSAGE IS FOR ITS INTENDED RECIPIENT ONLY. IT IS A PRIVILEGED DOCUMENT AND SHALL NOT BE RELEASED TO A THIRD PARTY WITHOUT THE CONSENT OF THE SENDER.

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV  
11/28/2006 11:22 AM

To ggilmour@eac.gov  
cc  
Subject Fw: FOIA Request

Per Peg's question, the answer would be no?

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

----- Forwarded by Jeannie Layson/EAC/GOV on 11/28/2006 11:21 AM -----

Margaret Sims/EAC/GOV

11/28/2006 11:19 AM

To Jeannie Layson/EAC/GOV@EAC  
cc ecortes@eac.gov  
Subject Re: FOIA Request Link

Jeannie:

We should have copies of the personal services contracts between EAC and Tova Wang and Job Serebrov in our contract files. (Each had an agreement for FY05 and for FY06 --- four agreements altogether). I have written on my working file copies, so they would be no good. There were no RFPs.

I have scads of email with Tova and Job, and limited correspondence with project working group members. I will forward the little email I can access now via a separate email. I cannot access the vast majority of the emails right now because my computer crashes every time I try to access my archived documents. (I'll check with Henry to find out how long it will take to fix this problem.) Some of these emails include documents that comprise the final report submitted by Job and Tova, so this would be a back door way for the FOIA requester to obtain that report. Copies of the only letter sent to the working group members are attached.

Karen Lynn-Dyson may also have some communications with Job and Tova, as she started out as the project manager before I took over. She also has been the person who dealt with the Eagleton Institute of Politics on the voter ID study. There also is a letter from then Chair Hillman to Donsanto. If Sheila cannot locate it, I can make a copy from my work file copy tomorrow.

In your opinion, does this request include copies of emails between EAC staff persons?

Peggy Sims  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave, NW - Ste 1100  
Washington, DC 20005  
Phone: 866-747-1471 (toll free) or 202-566-3120 (direct)  
Fax: 202-566-3127  
email: psims@eac.gov

Jeannie Layson/EAC/GOV

11/28/2006 10:27 AM

To EAC Personnel  
cc  
Subject FOIA Request

Hello everyone,  
I need each of you to respond affirmatively or negatively to the FOIA request below. If you have no documents in your possession related to this request, please reply to me with the words "no records."

010862